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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Anthony Visser

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30593

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EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3637

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/508,800	Applicant(s) VISSER, ANTHONY	
	Examiner MICHAEL SAFAVI	Art Unit 3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/01/09</u> . | 6) <input type="checkbox"/> Other: _____ |

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: '28'. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant specification does not

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appear to have originally disclosed “the supports are fixed relative to the flat plate”.

Otherwise, it is not understood as to what is being set forth by the recitation “the supports are fixed relative to the flat plate”.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 and 8-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 14, “the support surfaces” lacks antecedent basis within the claim. It is therefore, not clear as to what “the support surfaces” serves to define. Further, the language within lines 14-15 of claim 1 appears vague and indefinite in that it is not clear as to what is being defined by “the support surfaces are all offset in the same direction relative to the recesses.” It is not clear with respect to what the support surfaces are offset.

Claim 8, it is not understood how more than one support is connected to “a profile” particularly with respect to the elected embodiment of Fig. 11. Also, how does “a profile” extend parallel to an end wall of the carrier when “a profile” forms part of the claimed carrier? In other words, is “a profile” in addition to the claimed carrier?

Claim 10, (though withdrawn from consideration), it is not understood how the locking elements are formed by brackets fixed to the L-profile particularly with respect to

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the elected embodiment of Fig. 11. In other words, it is not clear as to how the locking elements are formed by brackets if the locking elements are formed “via lips”.

Claim 18, it is not clear as to what is being set forth by the recitation “the supports are fixed relative to the flat plate”. The specification does not appear to set forth how the supports “are fixed relative to the flat plate.”

With respect to Applicant’s arguments against the rejection of claim 1 under 35 U.S.C. 112, the language found within line 11 of claim 1 does not set forth a plurality of support surfaces. Further, it is not clear as to what is being defined by “the support surfaces are all offset in the same direction relative to the recesses.” The passages to which Applicant alludes, (reference should be made to the instant specification), do not serve to clarify. The only recitation of “adjacent to the recess the plate is provided with a support surface for supporting underlying carriers” is found within lines 25-26 on page 2 of the instant specification. However, no recitation is made of any offset of the “support surfaces” and it is not clear as with respect to what the support surfaces are offset.

With regard to claim 8, Applicant’s remarks do not set forth how more than one support is connected to “a profile” particularly with respect to the elected embodiment of Fig. 11. Applicant’s remarks do not set forth how “a profile” extends parallel to an end wall of the carrier when “a profile” forms part of the claimed carrier?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6, 8-13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Barefoot 2,747,748. Barefoot discloses, Figs. 1, 3, and 6 for example, a carrier comprising: a substantially rectangular flat plate 10; and supports 13 extending transversely of the flat plate from short sides of the flat plate for supporting the carrier in a stack of carriers, with interspacing for the growing material, wherein: the supports extend upward from the fiat plate; under each of the supports, a recess, (formed by the outer surface of each or both or any of 24 against which support 13 rests), is arranged in the carrier for receiving a support 13 of an underlying carrier, whereby the carrier is also nestable during return transport or storing empty carriers with less space taken up by the carriers than in the stack; adjacently to the recesses, the carrier is provided with a support surface, (surface of 11 or surface of 10), for supporting underlying carriers; and the support surfaces, (any surface or portions of the surface lying next to the recesses formed by outer surface of each or both or any of 24

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against which support 13 rests), are all “offset in the same direction relative to the recesses”. Locking elements 24 are provided on a side remote from the supports for locking the supports in a horizontal direction, **(claim 2)**. The flat plate 10 can be seen as within the frame 11, (outer periphery within which flat plate surface lies), of the carrier, **(claim 3)**. The supports are each formed by a curved metal strip 14, 16, and wherein the metal strips are connected to a surface of a profile 11 extending parallel to an end wall of the carrier with the profile 11 seen as having an L-shape, **(claims 8-10)**. The flat plate 10 lies within the frame 11, **(claim 11)**. The supports 13 can be seen as fixed relative to the flat plate 10, **(claim 18)**.

Claims 1, 2, 8, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by German reference DE 1,658,736, (Huls), (DE '736). DE '736 discloses a carrier comprising: a substantially rectangular flat plate 1; and supports 5, 6 extending transversely of the flat plate from short sides of the flat plate for supporting the carrier in a stack of carriers, with interspacing for the growing material, wherein: the supports extend upward from the fiat plate; under each of the supports, a recess 9 is arranged in the carrier for receiving a support 5, 6 of an underlying carrier, whereby the carrier is also nestable during return transport or storing empty carriers with less space taken up by the carriers than in the stack; adjacently to the recesses, the carrier is provided with a support surface, (top of 1 or underside of 1 (4?)), for supporting underlying carriers; and the support surfaces, (any surface or portions of the surface lying next to the recesses 9), are all “offset in the same direction relative to the

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recesses". Locking elements, (sides of the recesses 9), are provided on a side remote from the supports for locking the supports in a horizontal direction, (**claim 2**). The supports are each formed by a curved metal strip 5, 6 and wherein the metal strips are connected to a surface of a profile 2 or 3 extending parallel to an end wall of the carrier with the profile 3 seen as having an L-shape, (**claims 8-10**). The supports 5, 6 can be seen as fixed relative to the flat plate 1, (**claim 18**).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barefoot 2,747,748 in view of Fleetwood 2,803,369.

To have formed the rack of Barefoot from galvanized steel thus producing a durable rack assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fleetwood which teaches forming stacked rack units of galvanized steel.

Response to Arguments

Applicant's arguments filed December 01, 2009 have been fully considered but they are not persuasive. Recesses of Barefoot can be seen as along or formed by any

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side of 24/25 within which the supports 13 are arranged. Further, Barefoot discloses “the support surfaces are all offset in the same direction relative to the recesses” as is best understood. At any rate, the support surfaces of Barefoot are offset in at least one sense if not in more than one sense. Further, Barefoot can be stacked as shown by Fig. 4 of Barefoot. The supports 13 of Barefoot are fixed relative to the flat plate 10.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on December 01, 2009 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION**

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IS MADE FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL SAFAVI** whose telephone number is (571)272-7046. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darnell Jayne can be reached on (571) 272-7723. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

/Michael Safavi/
Primary Examiner, Art Unit 3637

M. Safavi
February 24, 2010